

[REDACTED]

[REDACTED]

801.10

May 9, 2003

BY FAX

Mr. B. Michael Verne
Premerger Notification Office
Federal Trade Commission
6th Street and Pennsylvania Avenue
Washington, DC 20580

RE: Valuation of Voting Securities

Dear Mike:

I am writing to confirm our conversation during which we agreed on conclusions regarding the value of the voting securities to be acquired in a transaction that I described to you. The value of these voting securities could impact the filing fee, but not its reportability, as all parties acknowledge that the value of the voting securities is greater than \$50 million.

Our client, Company A, proposes to acquire all of the voting securities of Company B, in exchange for:

- (1) a stated purchase price of approximately \$85 million to be paid to the current holders of the Company B voting securities;
- (2) a purchase price adjustment to occur on the closing date; and
- (3) an undertaking that Company A, concurrently with or immediately following closing, will repay the Company B's bank debt in the amount of approximately \$14.5 million.

We understand that Rule 801.10(a)(2) provides that the value of securities that are not publicly traded is determined as follows:

- If the acquisition price has been determined, the value is the acquisition price.
- If the acquisition price has not been determined, the value is the fair market value.

We further understand that the FTC considers the acquisition price to be "determined" if the parties have agreed upon the consideration or if the amount of consideration can be reasonably estimated (as, for example, contingent future payments that are reasonably

[REDACTED]

[REDACTED]

[Redacted]

Mr. B. Michael Verne
May 9, 2003
Page 2

certain to be paid). If the acquisition price is not "determined" then the board of directors of the buyer (or the board's authorized delegee) must determine, in good faith, the fair market value of the voting securities.

As to the particular transaction we discussed, if the closing adjustment (item 2) can be reasonably estimated, this amount will be added to the agreed fixed payment (item 1) to determine the total acquisition price. If the amount of the closing adjustment cannot be reasonably estimated, then the parties should treat the acquisition price as not determined and the board or its delegee must make the fair market value determination described above.

We understand that the Premerger Notification Office has advised in the past that the payoff of bank debt at closing (item 3) is not added to the stated purchase price of the voting securities (item 1) and the purchase price adjustment (item 2) in determining the value of a voting securities acquisition, despite the language in Rule 801.10(c)(2) that the "acquisition price" includes the value of all consideration for the voting securities to be acquired. The liabilities of Company B to be assumed upon purchase of the voting securities are not separately taken into account in determining the value of the deal, as the liabilities are presumed to have been taken into account in pricing the voting securities. This is true whether the Company B's liabilities are assumed by Company A or are instead immediately repaid, as Company A proposes to do.

Subject to a determination of the contingent payment (item 2) we would expect that the value of the Company B voting securities will be close to the stated purchase price of \$85 million. In making its final valuation, the buyer will not include the amount of the bank debt expected to be repaid, which, might otherwise push the value over the \$100 million filing fee threshold).

Please let me know promptly if you disagree with this analysis.

Very truly yours,

[Redacted Signature]

[Redacted]

AGREE -
N. OVUKA CONSENS.

B. Michael Verne

5/12/03

[Redacted]